

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**PLAINTIFF(S)**

**Thomas Brabec**

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

**FIRST AMENDED MASTER SHORT  
FORM COMPLAINT AND JURY  
TRIAL DEMAND**

1. Plaintiff, Thomas Brabec, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, Thomas Brabec, is a resident and citizen of the State of Wisconsin and claims damages as set forth below.

3. Plaintiff's Spouse, Paula Jean Brabec, is a resident and citizen of the State of Wisconsin, and claims damages as set forth below. *[Cross out Spousal Claim if not applicable.]*

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is Eastern District of Wisconsin.

6. Plaintiff brings this action [*check the applicable designation*]:

X On behalf of [himself/herself];

\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_.

A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[*Cross out if not applicable.*]

### **FACTUAL ALLEGATIONS**

7. On or about April 29, 2014, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at the Aspirus Wausau Hospital, 333 Pine Ridge Blvd. in Wausau, Wisconsin by Dr. Daniel M. Seybold.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”). Plaintiffs’ medical records indicate \_\_\_\_\_[insert name of pathogen, if known]\_\_\_\_\_ was discovered.

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has

undergone IV antibiotics for infections, irrigation and debridement with poly exchange  
 [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple  
 staged procedures, etc.] on or about May 2014, May 2017, July 2017, at Aspirus Awusau  
Hospital, 333 Pine Ridge Blvd, Wausau, WI; UW Health The American Center 4602 East  
Park Blvd, Madison, WI [medical center(s) and address(es)] by Dr(s). Daniel M. Seybold,  
Dr. Abuzzahad, Joseph M. Nessler. [*Cross out if not applicable.*]

### **ALLEGATIONS AS TO INJURIES**

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

X INJURY TO HERSELF/HIMSELF  
 \_\_\_\_\_ INJURY TO THE PERSON REPRESENTED  
 \_\_\_\_\_ WRONGFUL DEATH  
 \_\_\_\_\_ SURVIVORSHIP ACTION  
 \_\_\_\_\_ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are  
 applicable): [*Cross out if not applicable.*]

X LOSS OF SERVICES  
X LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to  
 Plaintiff(s).

### **DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

12. The following claims and allegations are asserted by Plaintiff(s) and are  
 herein adopted by reference (check all that are applicable):

X FIRST CAUSE OF ACTION - NEGLIGENCE;

- X SECOND CAUSE OF ACTION - STRICT LIABILITY;
- \_\_\_\_\_ FAILURE TO WARN
- \_\_\_\_\_ DEFECTIVE DESIGN AND MANUFACTURE
- X THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;
- \_\_\_\_\_ FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF \_\_\_\_\_, §§ \_\_\_\_\_;
- \_\_\_\_\_ FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;
- \_\_\_\_\_ SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;
- \_\_\_\_\_ SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;
- \_\_\_\_\_ EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;
- X NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF \_\_\_\_\_, §§ \_\_\_\_\_ ;
- X TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;
- X ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;
- \_\_\_\_\_ TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;
- \_\_\_\_\_ THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and
- X FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

N/A

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*[Cross out if not applicable.]*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: November 1, 2017

Respectfully submitted,

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